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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,531	11/05/2003	Wolfgang Platzek	20340.7	6037

7590 12/17/2004

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Bergwaldstr. 1  
Karlsruhe, D-76227  
GERMANY

EXAMINER
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JACKSON, ANDRE K

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/700,531	<b>Applicant(s)</b> PLATZEK	
	<b>Examiner</b> André K. Jackson	<b>Art Unit</b> 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-7 is/are rejected.
- 7) ☒ Claim(s) 4,8 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the microwave and the infrared radiation device must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the

examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heinz in view of Gebhard et al.

Regarding claim 1, Heinz discloses in the patent entitled "Rotary viscometer" an upper measuring part; a lower measuring part, where the lower and the upper measuring part delimit a measuring chamber for receiving the sample; and means for moving the upper measuring part relative to lower measuring part. Heinz does not disclose where at least one of the upper measuring part and the lower measuring part includes a ceramic material. However, Gebhard et al. disclose in the patent entitled "Normal reaction measurement for rheometer" where at least one of the

upper measuring part and the lower measuring part includes a ceramic material (Abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Heinz to include where at least one of the upper measuring part and the lower measuring part includes a ceramic material. By adding this feature the apparatus would be able to precisely measure the sample since the ceramic material would not undergo a significant temperature change during the operation of the apparatus.

Regarding claim 2, Heinz discloses where moving means effects a turning or pivoting motion (Abstract; Column 2).

Regarding claim 3, Heinz discloses where the moving means includes a driven shaft and the upper measuring part has a plate or a cone which delimits an upper side of the measuring chamber and which is coupled to the driven shaft (Figure 1). Heinz do not disclose where the plate or the cone consisting essentially of the ceramic material. However, Gebhard et al. disclose where the plate or the cone consists essentially of the ceramic material (Abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Heinz to include where the plate or the cone consists essentially of the ceramic material. By adding this feature the apparatus would be able to precisely measure the sample since the ceramic material would not

undergo a significant temperature change during the operation of the apparatus.

Regarding claim 5, Heinz do not disclose where the lower measuring part has a ceramic base plate, which delimits a lower side of measuring chamber. However, Gebhard et al. disclose where the lower measuring part has a ceramic base plate, which delimits a lower side of measuring chamber (Abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Heinz to include where the lower measuring part has a ceramic base plate, which delimits a lower side of measuring chamber. By adding this feature the apparatus would be able to precisely measure the sample since the ceramic material would not undergo a significant temperature change during the operation of the apparatus.

Regarding claim 6, neither Heinz nor Gebhard et al. disclose where ceramic components are produced by an injection molding method and where ceramic components are surface-treated. However, it is considered a design choice and well within the purview of the skilled artisan to produce the component by injection molding since this operation would provide a easier reproduction during manufacturing and provide a barrier with particular substances. The selection of a known material based upon

its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

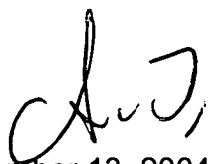
4. Claims 4,8 and 9 are objected to as being dependent upon a rejected base claim.
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to André K. Jackson whose telephone number is (571) 272-2196. The examiner can normally be reached on Mon.-Thurs. 7AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

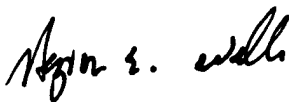
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 2856

A.J.



December 13, 2004



HEZRON WILLIAMS  
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